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Attorneys for Defendant Merck & Co., Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

TAMMA MAHURON,	)	
	)	Case No.: 07-cv-03118-MLC-TJB
Plaintiff,	)	
	)	<b>CERTIFICATION OF</b>
v.	)	<b>BART A. WHITLEY, ESQ.</b>
	)	
MERCK & CO., INC.,	)	
	)	
Defendant.	)	

---

BART A. WHITLEY, ESQ., by way of certification in lieu of affidavit, says:

1. I am an attorney duly admitted to practice law in the Courts of the State of New Jersey and the United States District Court for the District of New Jersey. I am an associate with the firm of Hughes Hubbard & Reed LLP, attorneys for defendant Merck & Co., Inc. (hereinafter, "Merck"). As such, I am fully familiar with the facts set forth herein. I submit this certification in support of Merck's Motion to Stay Proceedings Pending Transfer to MDL No. 1789.

2. Attached hereto as Exhibit "A" is the Order staying all proceedings pending transfer decision by the Judicial Panel on Multidistrict Litigation in *Potgieter v. Merck & Co., Inc.*, No. 07-cv-00002-DMC-MF (D.N.J. Mar. 15, 2007).

3. Attached hereto as Exhibit "B" is the MDL Panel Order, dated June 14, 2007, transferring *Potgieter v. Merck & Co., Inc.*, No. 07-cv-00002-DMC-MF (D.N.J.) to MDL No. 1789.

4. Attached hereto as Exhibit “C” is the MDL Panel Order transferring *Flores v. Merck & Co., Inc.*, No. 07-cv-00599-NLH-JS (D.N.J.) to MDL No. 1789.

5. Attached hereto as Exhibit “D” is the Order staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Demsky et al. v. Merck & Co., Inc., et al.*, No. 07-2839 (C.D. Cal. June 14, 2007).

6. Attached hereto as Exhibit “E” are the Minute Orders dated April 12, 2007 and May 15, 2007 staying all proceedings pending transfer to MDL No. 1789 and denying plaintiff’s motion for remand in *Walla. v. Merck & Co., Inc., et al.*, No. 07-C-1864 (N.D. Ill.).

7. Attached hereto as Exhibit “F” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Bogard v. Merck & Co., Inc, et al.*, No. C-06-6917 SC (N.D. Cal. Feb. 6, 2007).

8. Attached hereto as Exhibit “G” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Ferraro, et al. v. Merck & Co., Inc., et al.*, No. 06-7733 FMC (C.D. Cal. Feb. 2, 2007).

9. Attached hereto as Exhibit “H” is the Order denying plaintiff’s motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Clayton v. Merck & Co., Inc.*, No. 06-6398 FMC (C.D. Cal. Dec. 7, 2006).

10. Attached hereto as Exhibit “I” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Morris v. Merck & Co., Inc.*, No. 06-5587 FMC (C.D. Cal. Dec. 6, 2006).

11. Attached hereto as Exhibit “J” is the Order staying all proceedings pending transfer decision by the Judicial Panel on Multidistrict Litigation in *Purdy v. Merck & Co., Inc.*, No. 2:06-0223 KS-MTP (S.D. Miss. Nov. 1, 2006).

12. Attached hereto as Exhibit “K” is the Order deferring to rule on plaintiff’s motion to remand subject to a final ruling by the Judicial Panel on Multidistrict Litigation regarding transfer in *Goya v. Merck & Co., Inc.*, No. 06-2574 (S.D. Cal. Feb. 1, 2007).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: July 13, 2007

s/ Bart A. Whitley  
Bart A. Whitley

# EXHIBIT A

Case 2:07-cv-00002-DJC Document 1-1 Filed 03/16/07 Page 1 of 1

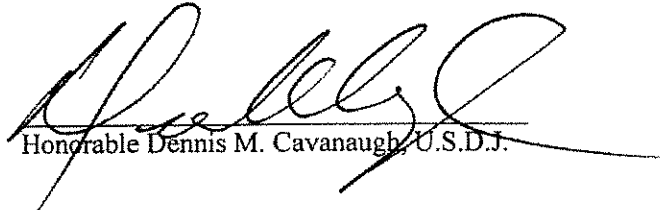
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MARY ELLEN POTGIETER,	)	
	)	Case No.: 07-cv-00002-DJC-MF
Plaintiff,	)	
	)	ORDER STAYING
v.	)	PROCEEDINGS PENDING
	)	TRANSFER TO MDL NO. 1789
MERCK & CO., INC.,	)	
	)	
Defendant.	)	

THIS MATTER having been brought before the Court on the motion of defendant to stay proceedings pending transfer to MDL No. 1789; and the Court having considered the submissions of the parties in support of and in opposition to the motion; and for good cause having been shown:

IT IS on this 15 day of March, 2007,

ORDERED that defendant's Motion to Stay is GRANTED. This action is stayed pending a transfer decision from the Judicial Panel on Multidistrict Litigation.

  
Honorable Dennis M. Cavanaugh, U.S.D.J.

# EXHIBIT B

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

JUN 14 2007

FILED  
CLERK'S OFFICE

**DOCKET NO. 1789**

***BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION***

***IN RE FOSAMAX PRODUCTS LIABILITY LITIGATION***

***Mary Ellen Potgieter v. Merck & Co., Inc., D. New Jersey, C.A. No. 2:07-2***

***BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,\* KATHRYN H. VRATIL,  
DAVID R. HANSEN\* AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL***

***TRANSFER ORDER***

Before the Panel is a motion brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiff in a District of New Jersey action. This plaintiff asks the Panel to vacate its order conditionally transferring the action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Lone defendant Merck & Co., Inc., opposes the motion to vacate and urges inclusion of the action in the MDL-1789 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that this action involves common questions of fact with the actions in this litigation previously transferred to the Southern District of New York, and that transfer of this action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of this action is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Southern District of New York was a proper Section 1407 forum for actions involving allegations that ingestion of Fosamax, a prescription medication used in the treatment of osteoporosis, caused adverse effects, in particular, osteonecrosis of the jaw. *See In re Fosamax Products Liability Litigation*, 444 F.Supp.2d 1347 (J.P.M.L. 2006). Plaintiff's motion for remand to state court can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

---

\* Judges Motz, Miller and Hansen took no part in the decision of this matter.

- 2 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable John F. Keenan for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



---

Wm. Terrell Hodges  
Chairman



# EXHIBIT C

**A CERTIFIED TRUE COPY**

MAR 23 2007

ATTEST  
FOR THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**JUDGE KEENAN**  
**07 CV 2442**JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

MAR -7 2007

FILED  
CLERK'S OFFICEFLD  
SD of NY  
3/27/07

DOCKET NO. 1789

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE FOSAMAX PRODUCTS LIABILITY LITIGATION***Debra Flores v. Merck & Co., Inc., et al.*, D. New Jersey, C.A. No. 1:07-599**CONDITIONAL TRANSFER ORDER (CTO-15)**

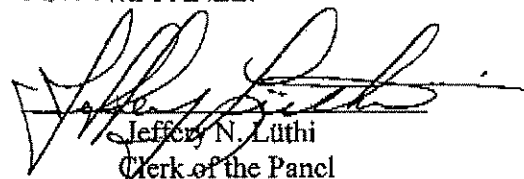
On August 16, 2006, the Panel transferred four civil actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* 444 F.Supp.2d 1347 (J.P.M.L. 2006). Since that time, 38 additional actions have been transferred to the Southern District of New York. With the consent of that court, all such actions have been assigned to the Honorable John F. Keenan.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Southern District of New York and assigned to Judge Keenan.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the Southern District of New York for the reasons stated in the order of August 16, 2006, and, with the consent of that court, assigned to the Honorable John F. Keenan.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

  
 Jeffrey N. Lüthi  
 Clerk of the Panel

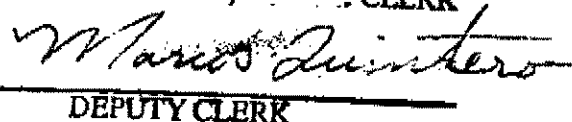
Inasmuch as no objection is  
pending at this time, the  
stay is lifted.

MAR 23 2007

CLERK'S OFFICE  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**A CERTIFIED COPY**

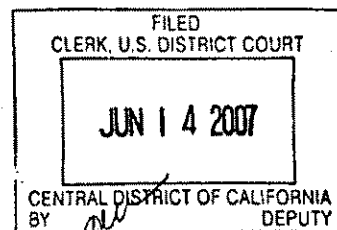
J. MICHAEL McMAHON, CLERK

BY

  
 DEPUTY CLERK

# EXHIBIT D

P Send



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JERI DEMSKY, et al.,

Plaintiffs,

vs.

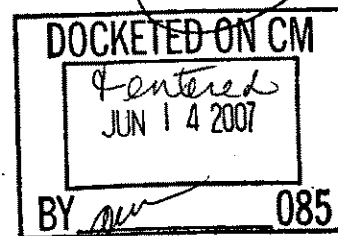
MERCK & CO., INC., a New Jersey  
Corporation; McKESSON  
CORPORATION, a Delaware  
corporation; DOES 1-50,

Defendants.

CV 07-2839 FMC (PJWx)

ORDER GRANTING DEFENDANT'S  
MOTION TO STAY AND DENYING  
PLAINTIFFS' MOTION TO REMAND

#14



This matter is before the Court on Defendant Merck & Co., Inc.'s unopposed Motion to Stay Proceedings (docket no. 11) and Plaintiffs' Motion to Remand to State Court (docket no. 13), filed on May 24, 2007, and May 29, 2007, respectively. The Court has considered the documents submitted in connection with the motions and deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearings set for June 18, 2007, and

1 July 2, 2007, are removed from the Court's calendar. For the reasons and in the  
2 manner set forth below, the Court **GRANTS** Defendant's Motion to Stay and  
3 **DENIES** Plaintiffs' Motion to Remand without prejudice to the filing of a renewed  
4 motion in the event that the Judicial Panel on Multidistrict Litigation (JPML) does  
5 not transfer this case to Multidistrict Litigation (MDL) No. 1789, *In Re: Fosamax*  
6 *Prods. Liab. Litig.*

### 7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs took the prescription drug Fosamax, which is manufactured and sold  
9 by Defendant Merck & Co., Inc. (Merck) and distributed by Defendant McKesson  
10 Corporation (McKesson). Plaintiffs filed their Complaint in the Superior Court for  
11 the State of California, County of Los Angeles, on April 18, 2007. Plaintiffs allege,  
12 *inter alia*, that Defendants misrepresented (affirmatively and through a failure to  
13 warn) that Fosamax was a safe and effective treatment for osteoporosis, Paget's  
14 Disease, and other conditions. Plaintiffs further allege that, as a proximate result of  
15 ingesting Fosamax, they have been permanently and severely injured.

16 On April 30, 2007, Defendant Merck removed the action to this Court on the  
17 basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson, a  
18 California citizen, is fraudulently joined. In their motion to remand, Plaintiffs argue  
19 that joinder was proper. In its Motion for Stay, Merck maintains that resolution of  
20 the question of the propriety of Plaintiffs' joinder of McKesson should be deferred  
21 pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods.*  
22 *Liab. Litig.*, and that all other proceedings in this action should be stayed until such  
23 time.

### 24 **STANDARD OF LAW**

25 "A trial court may, with propriety, find it is efficient for its own docket and the  
26 fairest course for the parties to enter a stay of an action before it, pending resolution  
27 of independent proceedings which bear upon the case." *Leyva v. Certified Grocers*

1 of California, Ltd., 593 F.2d 857, 863 (9th Cir. 1979); see also *Landis v. North*  
2 *American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) (“[T]he power  
3 to stay proceedings is incidental to the power inherent in every court to control the  
4 disposition of the causes on its docket with economy of time and effort for itself, for  
5 counsel, and for litigants.”).

## 6 DISCUSSION

7 A stay of all proceedings until such time as the JPML renders its final  
8 decision regarding transfer is in the interest of judicial economy. A steady succession  
9 of cases involving the drug Fosamax are being filed in this district and other districts  
10 throughout the country and are awaiting transfer to the MDL proceedings.<sup>1</sup> Given the  
11 similarity of this litigation to other recent pharmaceutical products liability litigation,  
12 the Court finds that there are likely to be many more cases (in this district or  
13 otherwise) that present the precise question of the propriety of joinder of Defendant  
14 McKesson and/or other “distributor” defendants. Consideration of Plaintiffs’ remand  
15 motion by this Court at this juncture would therefore run the risk of inconsistent  
16 rulings among different judges in different districts and/or would constitute an  
17 inefficient use of judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist.  
18 LEXIS 28408 \*4 (N.D. Cal. 2006) (“[E]ven if the Court were to grant Plaintiffs’  
19 motion to relate all Zyprexa cases naming McKesson Corporation in this district,  
20 judges in other California districts would nonetheless have to decide the issue, thus  
21 resulting in unnecessarily duplicative litigation, an inefficient use of judicial  
22 resources, and the risk of inconsistent results.”).

23  
24  
25 <sup>1</sup> According to the JPML website, there are now 154 actions pending in MDL No. 1789, *In*  
26 *Re: Fosamax Prods. Liab. Litig.* See <http://www.jpml.uscourts.gov/> (follow “Pending MDLs,” then  
27 “Distribution of Pending MDL Dockets”).

1 **CONCLUSION**

2 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay  
3 Proceedings (docket no. 14) is **GRANTED**. Proceedings in this case are STAYED  
4 until issuance of a final decision by the JPML regarding transfer or for sixty (60)  
5 days, whichever is earlier.

6 Plaintiffs' Motion to Remand (docket no. 11) is **DENIED** without prejudice  
7 to the filing of a renewed motion if transfer is denied.

8  
9 **IT IS SO ORDERED.**

10 Dated: June 14, 2006

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14 FLORENCE-MARIE COOPER, JUDGE  
15 UNITED STATES DISTRICT COURT  
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# EXHIBIT E



**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Ruben Castillo	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	07 C 1864	<b>DATE</b>	4/12/2007
<b>CASE TITLE</b>	Walla vs. Merck & Co., Inc. et al		

**DOCKET ENTRY TEXT**

Defendant Merck & Co., Inc.'s motion to stay all proceedings before this Court is granted. Motion hearing set for 4/19/2007 is vacated. After a careful review of the pleadings in this recently removed lawsuit, this Court hereby dismisses said state court complaint without prejudice to the pending transfer to MDL No. 1789 and the filing of an appropriate amended federal complaint or motion to remand before the transferee judge.

	Courtroom Deputy Initials:	DL
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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0  
Eastern Division**

Dianne Walla

Plaintiff,

v.

Case No.: 1:07-cv-01864

Honorable Ruben Castillo

Merck & Co., Inc., et al.

Defendant.

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, May 15, 2007:

MINUTE entry before Judge Ruben Castillo :Motion hearing held on 5/15/2007.  
Plaintiff's motion for remand [18] is denied without prejudice to its renewal before the  
transferee judge. Mailed notice(rao, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of  
Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was  
generated by CM/ECF, the automated docketing system used to maintain the civil and  
criminal dockets of this District. If a minute order or other document is enclosed, please  
refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our  
web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

# EXHIBIT F

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER BOGARD and ROBERT BOGARD, ) No. C-06-6917 SC  
)  
Plaintiffs, )  
)  
v. ) ORDER GRANTING  
) DEFENDANT'S MOTION TO  
) STAY AND DENYING  
MERCK & CO., INC., a New Jersey ) PLAINTIFFS' MOTION TO  
Corporation; McKESSON CORPORATION, ) REMAND  
a Delaware Corporation; DOES 1-50, )  
inclusive, )  
)  
Defendants. )

**I. INTRODUCTION**

Upon removing this action to federal court, Defendant Merck & Co., Inc. ("Merck") filed a Notice of Pendency of Other Proceeding and a Motion to Stay the Proceedings. See Docket Nos. 1, 3, 5. Defendant seeks the stay in order to give the Judicial Panel on Multidistrict Litigation ("JPML") the opportunity to transfer the case to Multidistrict Litigation No. 1789, In Re: Fosamax Prods. Liab. Litig. Plaintiffs Jennifer and Robert Bogard opposed Merck's motion and filed a Motion to Remand. See Docket Nos. 9 and 10. For the reasons stated herein, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiffs' Motion to Remand without prejudice.

**II. BACKGROUND**

Plaintiff Jennifer Bogard alleges that she ingested and was

1 injured by the prescription drug Fosamax, which is manufactured by  
2 Merck and marketed, distributed, and sold by Defendant McKesson  
3 Corporation ("McKesson"). See Complaint, Docket No. 10.  
4 Plaintiffs filed suit in the California Superior Court for the  
5 County of San Francisco. See Docket No. 10. Merck removed the  
6 case to federal court on the basis of diversity jurisdiction, 28  
7 U.S.C. § 1332, alleging that McKesson, a California citizen, was  
8 fraudulently joined. See Docket No. 1.

### 9 10 **III. LEGAL STANDARD**

11 "[T]he power to stay proceedings is incidental to the power  
12 inherent in every court to control the disposition of the causes  
13 on its docket with economy of time and effort for itself, for  
14 counsel, and for litigants." Landis v. North American Co., 299  
15 U.S. 248, 254 (1936). "A trial court may, with propriety, find it  
16 is efficient for its own docket and the fairest course for the  
17 parties to enter a stay of an action before it, pending resolution  
18 of independent proceedings which bear upon the case." Leyva v.  
19 Certified Grocers of California, Ltd., 593 F.2d 857, 863 (9th Cir.  
20 1979).

### 21 22 **IV. DISCUSSION**

23 Appropriate grounds for transferring a case to multidistrict  
24 litigation include promoting "the just and efficient conduct of  
25 such actions." 28 U.S.C. § 1407(a). The issue of whether  
26 McKesson was fraudulently joined in order to destroy federal  
27 jurisdiction is identical to that posed in other Fosamax cases.

1 See Tanzer Decl., Docket No. 17 (including an order from Morris v.  
2 Merck & Co., Inc. et al., a case from the Central District of  
3 California addressing the same issue and concluding that a stay  
4 was appropriate). As the Morris court and others have concluded,  
5 consideration of Plaintiffs' Motion to Remand and the issue of  
6 fraudulent joinder outside the JPML would foster "unnecessarily  
7 duplicative litigation, an inefficient use of judicial resources,  
8 and the risk of inconsistent results." Stempien v. Eli Lilly and  
9 Co., 2006 WL 1214836, at \*1 (N.D. Cal., May 4, 2006) (discussing  
10 the potentially fraudulent joinder of McKesson in the Zyprexa  
11 litigation). In the interests of judicial economy, the best  
12 results will be obtained by referring the case to Multidistrict  
13 Litigation No. 1789, In Re: Fosamax Prods. Liab. Litig. for  
14 resolution of this issue in coordinated pretrial proceedings.

15  
16 **V. CONCLUSION**

17 The Court GRANTS Defendant's Motion to Stay. All proceedings  
18 in this case are STAYED until issuance of a final decision by the  
19 JPML regarding transfer or for sixty (60) days, whichever is  
20 earlier. In addition, the Court DENIES Plaintiffs' Motion to  
21 Remand without prejudice to re-file in the event transfer is  
22 unsuccessful.

23 IT IS SO ORDERED.  
24

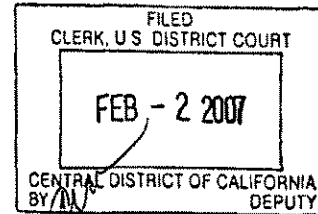
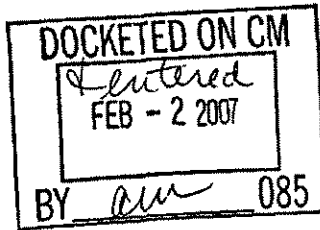
25 Dated: February 6, 2007



UNITED STATES DISTRICT JUDGE

# EXHIBIT G

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SCANNED

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NANCY FERRARO, a single woman;  
LILLIE H. AUGERSON, a single  
woman; LUIGA MORRA, a single  
woman; EVELYN LACEY, a single  
woman; JERRY W. GRAHAM, a  
single woman; MINA A. HOLCOMB,  
a single woman,

Plaintiffs,

vs.

MERCK & CO., INC., a New Jersey  
Corporation; McKESSON  
CORPORATION, a Delaware  
corporation; DOES 1-50

Defendants.

CV 06-7733 FMC (PJWx)

ORDER GRANTING DEFENDANT'S  
MOTION TO STAY AND DENYING  
PLAINTIFFS' MOTION TO REMAND

#21

22 This matter is before the Court on Plaintiffs' Motion to Remand to State Court  
23 (docket no. 11), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings  
24 (docket no. 14), filed on January 4, 2007, and January 11, 2007, respectively. The  
25 Court has considered the moving and opposition documents submitted in connection  
26 with the motions. The Court deems this matter appropriate for decision without oral  
27 argument. See Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for



1 February 5, 2007, is removed from the Court's calendar. For the reasons and in the  
2 manner set forth below, the Court **GRANTS** Defendant's Motion to Stay and  
3 **DENIES** Plaintiffs' Motion to Remand without prejudice to the filing of a renewed  
4 motion in the event that the Judicial Panel on Multidistrict Litigation ("JPML") does  
5 not transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*  
6 *Prods. Liab. Litig.*

### 7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs Nancy Ferraro, Lillie H. Augerson, Luiga Morra, Evelyn Lacey,  
9 Jerry W. Graham, and Mina A. Holcomb took the prescription drug Fosamax, which  
10 is manufactured and sold by Defendant Merck & Co., Inc. ("Merck") and distributed  
11 by Defendant McKesson Corporation ("McKesson"). Plaintiffs filed their Complaint  
12 in the Superior Court for the State of California, County of Los Angeles, on  
13 December 1, 2006. Plaintiffs allege, *inter alia*, that Defendants misrepresented  
14 (affirmatively and through a failure to warn) that Fosamax was a safe and effective  
15 treatment for osteoporosis, Paget's Disease, and other conditions. Plaintiffs further  
16 allege that, as a proximate result of ingesting Fosamax, they have been permanently  
17 and severely injured.

18 On December 6, 2006, Defendant Merck removed the action to this Court on  
19 the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson,  
20 a California citizen, is fraudulently joined. In their motion to remand, Plaintiffs  
21 argue that joinder was proper. In its Opposition to the motion and in its separate  
22 Motion for Stay, Merck maintains that resolution of the question of the propriety of  
23 Plaintiffs' joinder of McKesson should be deferred pending transfer of this action  
24 to the MDL proceedings in *In Re Fosamax Prods. Liab. Litig.*, and that all other  
25  
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proceedings in this action should be stayed until such time.<sup>1</sup> McKesson joins in Merck's Opposition to the motion to remand and in the Motion to Stay in all respects.

#### STANDARD OF LAW

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

#### DISCUSSION

A stay of all proceedings until such time as the JPML renders its final decision regarding transfer is in the interest of judicial economy. A steady succession of cases involving the drug Fosamax are being filed in this district and other districts throughout the country and are awaiting transfer to the MDL proceedings.<sup>2</sup> Given the similarity of this litigation to other recent pharmaceutical products liability litigation, the Court finds that there are likely to be many more cases (in this district or otherwise) which present the precise question of the propriety of joinder of

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<sup>1</sup>Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the JMPL issued a Conditional Transfer Order on December 27, 2006. Plaintiffs were required to file a Motion to Vacate that Order on or before January 25, 2007. *See Request for Judicial Notice in Support of Merck & Co., Inc.'s Opposition to Plaintiff's Motion to Remand*, Exhibits 3-4.

<sup>2</sup> According to the JPML website, there are now 77 actions pending in MDL No. 1789, *In Re: Fosamax Prods. Liab. Litig.* *See* [http://www.jpml.uscourts.gov/Pending\\_MDLS/pending\\_mdls.html](http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html) (follow "Distribution of Pending MDL Dockets").

1 Defendant McKesson and/or other “distributor” defendants.<sup>3</sup> Consideration of  
 2 Plaintiffs’ remand motion by this Court at this juncture would therefore run the risk  
 3 of inconsistent rulings between different judges in different districts and/or would  
 4 constitute an inefficient use of judicial resources. *Cf. Stempien v. Eli Lilly & Co.*,  
 5 2006 U.S. Dist. LEXIS 28408 \*4 (N.D. Cal. 2006) (“[E]ven if the Court were to grant  
 6 Plaintiffs’ motion to relate all Zyprexa cases naming McKesson Corporation in this  
 7 district, judges in other California districts would nonetheless have to decide the  
 8 issue, thus resulting in unnecessarily duplicative litigation, an inefficient use of  
 9 judicial resources, and the risk of inconsistent results.”).

#### 10 CONCLUSION

11 Based on the foregoing, Defendant Merck & Co., Inc.’s Motion to Stay  
 12 Proceedings (docket no. 14) is **GRANTED**. Proceedings in this case are STAYED  
 13 until issuance of a final decision by the JPML regarding transfer or for sixty (60)  
 14 days, whichever is earlier.

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21 <sup>3</sup>As Defendants point out, two Fosamax cases which name both Merck and McKesson as  
 22 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern  
 23 Districts of California. *See* Request for Judicial Notice in Support of Defendant Merck & Co., Inc.’s  
 24 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibit 3. The Court takes judicial  
 25 notice of the fact that Merck is raising the same issues of fraudulent joinder in those cases and has  
 26 filed a similar motion to stay proceedings pending possible transfer to the MDL action in the  
 27 Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens*  
*Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of  
 “proceedings in other courts, both within and without the federal judicial system, if those  
 proceedings have a direct relation to matters at issue.”).

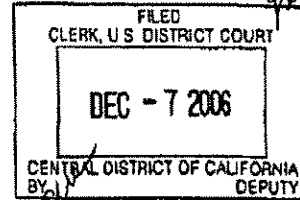
1           Plaintiffs' Motion to Remand (docket no. 11) is **DENIED** without prejudice  
2 to the filing of a renewed motion if transfer is denied.

3  
4 **IT IS SO ORDERED.**

5 Dated: February 4, 2006

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9 FLORENCE-MARIE COOPER, JUDGE  
10 UNITED STATES DISTRICT COURT  
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# EXHIBIT H



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANNE E. CLAYTON,

Plaintiff,

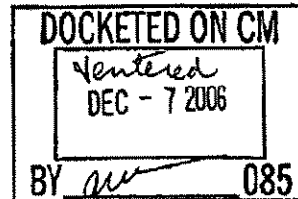
vs.

MERCK & CO., INC., a New Jersey  
Corporation; McKESSON  
CORPORATION, a Delaware  
corporation; DOES 1-50

Defendants.

CV 06-6398 FMC (PJWx)

ORDER GRANTING DEFENDANT'S  
MOTION TO STAY AND DENYING  
PLAINTIFF'S MOTION TO REMAND



This matter is before the Court on Plaintiff's Motion to Remand to State Court (docket no. 10), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings (docket no. 12), filed on November 3, 2006 and November 8, 2006, respectively. The Court has considered the moving, opposition and reply documents submitted in connection with the motions. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for December 11, 2006, is removed from the Court's calendar. For the reasons and in the manner set forth below, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiff's

# 19

1 Motion to Remand without prejudice to the filing of a renewed motion in the  
2 event that the Judicial Panel on Multidistrict Litigation ("JPML") does not  
3 transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*  
4 *Prods. Liab. Litig.*

5 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

6 Plaintiff, Anne E. Clayton, took the prescription drug Fosamax, which is  
7 manufactured and sold by Defendant Merck & Co., Inc. ("Merck") and  
8 distributed by Defendant McKesson Corporation ("McKesson"). Plaintiff filed  
9 her Complaint in the Superior Court for the State of California, County of Los  
10 Angeles, on September 28, 2006. Plaintiff alleges, *inter alia*, that Defendants  
11 misrepresented (affirmatively and through a failure to warn) that Fosamax was a  
12 safe and effective treatment for osteoporosis, Paget's Disease and other  
13 conditions. Plaintiff further alleges that, as a proximate result of injecting  
14 Fosamax, she has been permanently and severely injured.

15 On October 6, 2006, Defendant Merck removed the action to this Court on  
16 the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson,  
17 a California citizen, is fraudulently joined. In her motion to remand, Plaintiff  
18 argues that joinder was proper. In its Opposition to the motion and in its  
19 separate Motion for Stay, Merck maintains that resolution of the question of the  
20 propriety of Plaintiff's joinder of McKesson should be deferred pending transfer  
21 of this action to the MDL proceedings in *In Re Fosamax Prods. Liab. Litig.*, and  
22 that all other proceedings in this action should be stayed until such time.<sup>1</sup>  
23 McKesson joins in Merck's Opposition to the motion to remand and the Motion

24  
25 <sup>1</sup>Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict  
26 Litigation, the JPML issued a Conditional Transfer Order on November 2, 2006. Plaintiff's Motion  
27 to Vacate that Order is currently pending. See Request for Judicial Notice in Support of Merck &  
Co., Inc.'s Opposition to Plaintiff's Motion to Remand, Exhibits 1-2.



1 to Stay in all respects.

## 2 STANDARD OF LAW

3 "A trial court may, with propriety, find it is efficient for its own docket and  
4 the fairest course for the parties to enter a stay of an action before it, pending  
5 resolution of independent proceedings which bear upon the case." *Leyva v.*  
6 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also*  
7 *Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163  
8 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in  
9 every court to control the disposition of the causes on its docket with economy of  
10 time and effort for itself, for counsel, and for litigants.").

## 11 DISCUSSION

12 A stay of all proceedings until such time as the JPML renders its final  
13 decision regarding transfer is in the interest of judicial economy. A steady  
14 succession of cases involving the drug Fosamax are being filed in this district  
15 and other districts throughout the country and are awaiting transfer to the MDL  
16 proceedings.<sup>2</sup> Given the similarity of this litigation to other recent  
17 pharmaceutical products liability litigation, the Court finds that there are likely to  
18 be many more cases (in this district or otherwise) which present the precise  
19 question of the propriety of joinder of Defendant McKesson and/or other  
20 "distributor" defendants.<sup>3</sup> Consideration of Plaintiff's remand motion by this

21  
22 <sup>2</sup> According to the JPML website, there are now 58 actions pending in MDL No. 1789, *In Re:*  
23 *Fosamax Prods. Liab. Litig.* See [http://www.jpml.uscourts.gov/Pending\\_MDLS/pending\\_mdls.html](http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html) (follow "Distribution of Pending MDL Dockets").

24 <sup>3</sup> As Defendants point out, two Fosamax cases which name both Merck and McKesson as  
25 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern  
26 Districts of California. See Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s  
27 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibits 2-3. The Court takes  
judicial notice of the fact that Merck is raising the same issues of fraudulent joinder in those cases



1 Court at this juncture would therefore run the risk of inconsistent rulings between  
 2 different judges in different districts and/or would constitute an inefficient use of  
 3 judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist. LEXIS  
 4 28408 \*4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant Plaintiffs' motion  
 5 to relate all Zyprexa cases naming McKesson Corporation in this district, judges  
 6 in other California districts would nonetheless have to decide the issue, thus  
 7 resulting in unnecessarily duplicative litigation, an inefficient use of judicial  
 8 resources, and the risk of inconsistent results.").

### 9 CONCLUSION

10 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay  
 11 Proceedings (docket no. 12) is GRANTED. Proceedings in this case are  
 12 STAYED until issuance of a final decision by the JPML regarding transfer or for  
 13 sixty (60) days, whichever is earlier.

14 Plaintiff's Motion to Remand (docket no. 10) is DENIED without  
 15 prejudice to the filing of a renewed motion if transfer is denied.

16  
 17 IT IS SO ORDERED.

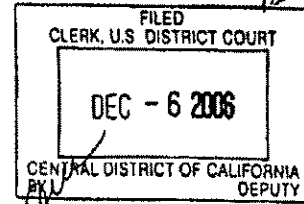
18 December 7, 2006



19 FLORENCE MARIE COOPER, JUDGE  
 20 UNITED STATES DISTRICT COURT  
 21  
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 23

24 \_\_\_\_\_  
 25 and has filed a similar motion to stay proceedings pending possible transfer to the MDL action in  
 26 the Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria*  
 27 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice  
 of "proceedings in other courts, both within and without the federal judicial system, if those  
 proceedings have a direct relation to matters at issue.").

# EXHIBIT I



8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 EDWARD A. MORRIS and RUTH P. )  
11 MORRIS, husband and wife; HELEN )  
12 F. TRACY, a single woman; JUDY C. )  
PENN and BUDDY W. PENN, wife  
and husband,

13 Plaintiffs,

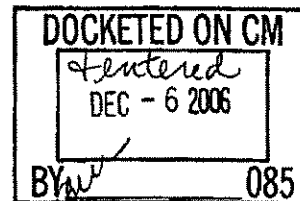
14 vs.

15 MERCK & CO., INC., a New Jersey  
16 Corporation; McKESSON  
17 CORPORATION, a Delaware  
corporation; DOES 1-50

18 Defendants.  
19  
20

CV 06-5587 FMC (PJWx)

ORDER GRANTING DEFENDANT'S  
MOTION TO STAY AND DENYING  
PLAINTIFFS' MOTION TO REMAND



21 This matter is before the Court on Plaintiffs' Motion to Remand to State  
22 Court (docket no. 18), and Defendant Merck & Co., Inc.'s Motion to Stay  
23 Proceedings (docket no. 23), filed on October 26, 2006 and November 6, 2006,  
24 respectively. The Court has considered the moving, opposition and reply  
25 documents submitted in connection with the motions. The Court deems this  
26 matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78,  
27 Local Rule 7-15. Accordingly, the hearing set for December 11, 2006, is

#35

1 removed from the Court's calendar. For the reasons and in the manner set forth  
 2 below, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiffs'  
 3 Motion to Remand without prejudice to the filing of a renewed motion in the  
 4 event that the Judicial Panel on Multidistrict Litigation ("JPML") does not  
 5 transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*  
 6 *Prods. Liab. Litig.*

### 7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs Edward A. Morris, Helen F. Tracy and Judy C. Penn took the  
 9 prescription drug Fosamax, which is manufactured and sold by Defendant Merck  
 10 & Co., Inc. ("Merck") and distributed by Defendant McKesson Corporation  
 11 ("McKesson"). Plaintiffs filed their Complaint in the Superior Court for the  
 12 State of California, County of Los Angeles, on August 16, 2006. Plaintiffs  
 13 allege, *inter alia*, that Defendants misrepresented (affirmatively and through a  
 14 failure to warn) that Fosamax was a safe and effective treatment for osteoporosis,  
 15 Paget's Disease and other conditions. Plaintiffs further allege that, as a  
 16 proximate result of injecting Fosamax, they have been permanently and severely  
 17 injured. Co-Plaintiffs Ruth P. Morris and Buddy W. Penn are bringing separate  
 18 claims for loss of consortium.

19 On September 6, 2006, Defendant Merck removed the action to this Court  
 20 on the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant  
 21 McKesson, a California citizen, is fraudulently joined. In their motion to  
 22 remand, Plaintiffs argue that joinder was proper. In its Opposition to the motion  
 23 and in its separate Motion for Stay, Merck maintains that resolution of the  
 24 question of the propriety of Plaintiffs' joinder of McKesson should be deferred  
 25 pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods.*  
 26 *Liab. Litig.*, and that all other proceedings in this action should be stayed until  
 27

such time.<sup>1</sup> McKesson joins in Merck's Opposition to the motion to remand and the Motion to Stay in all respects.

### STANDARD OF LAW

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

### DISCUSSION

A stay of all proceedings until such time as the JPML renders its final decision regarding transfer is in the interest of judicial economy. A steady succession of cases involving the drug Fosamax are being filed in this district and other districts throughout the country and are awaiting transfer to the MDL proceedings.<sup>2</sup> Given the similarity of this litigation to other recent pharmaceutical products liability litigation, the Court finds that there are likely to be many more cases (in this district or otherwise) which present the precise question of the propriety of joinder of Defendant McKesson and/or other

---

<sup>1</sup>Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the JMPL issued a Conditional Transfer Order on September 22, 2006. Plaintiffs' Motion to Vacate that Order is currently pending. *See* Request for Judicial Notice in Support of Merck & Co., Inc.'s Motion to Stay Proceedings, Exhibits 1-2.

<sup>2</sup> According to the JPML website, there are now 58 actions pending in MDL No. 1789, *In Re: Fosamax Prods. Liab. Litig.* *See* [http://www.jpml.uscourts.gov/Pending\\_MDLS/pending\\_mdls.html](http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html) (follow "Distribution of Pending MDL Dockets").

1 "distributor" defendants.<sup>3</sup> Consideration of Plaintiffs' remand motion by this  
 2 Court at this juncture would therefore run the risk of inconsistent rulings between  
 3 different judges in different districts and/or would constitute an inefficient use of  
 4 judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist. LEXIS 28408  
 5 \*4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant Plaintiffs' motion to  
 6 relate all Zyprexa cases naming McKesson Corporation in this district, judges in  
 7 other California districts would nonetheless have to decide the issue, thus  
 8 resulting in unnecessarily duplicative litigation, an inefficient use of judicial  
 9 resources, and the risk of inconsistent results.").

### 10 CONCLUSION

11 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay  
 12 Proceedings (docket no. 23) is GRANTED. Proceedings in this case are  
 13 STAYED until issuance of a final decision by the JPML regarding transfer or for  
 14 sixty (60) days, whichever is earlier.

15 Plaintiffs' Motion to Remand (docket no. 18) is DENIED without  
 16 prejudice to the filing of a renewed motion if transfer is denied.

17  
 18 IT IS SO ORDERED.

19 December 6, 2006



20 FLORENCE MARIE COOPER, JUDGE  
 21 UNITED STATES DISTRICT COURT

22  
 23 <sup>3</sup>As Defendants point out, two Fosamax cases which name both Merck and McKesson as  
 24 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern  
 25 Districts of California. See Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s  
 26 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibits 1-2. The Court takes  
 27 judicial notice of the fact that Merck is raising the same issues of fraudulent joinder those cases and  
 has filed a similar motion to stay proceedings pending possible transfer to the MDL action in the  
 Northern District case. See Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens  
 Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of  
 "proceedings in other courts, both within and without the federal judicial system, if those  
 proceedings have a direct relation to matters at issue.").

# EXHIBIT J

Case 2:06-cv-00223-KS-MTP Document 10 Filed 11/01/2006 Page 1 of 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION

JENNIE PURDY, ET AL.

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:06-cv-223-KS-MTP

MERCK & COMPANY, INC., ET AL.

DEFENDANTS

**ORDER**

Pending before the Court is Merck's Motion to Stay Pending Transfer to MDL No. 1789 [7]. Additionally, Plaintiff has filed a Motion to Remand [8] thereby requiring a stay under the local rules.

IT IS, THEREFORE, ORDERED that this action is stayed pending a transfer decision from the Judicial Panel on Multidistrict Litigation, remand to state court, or further order of this court.

SO ORDERED, this the 1<sup>st</sup> day of November, 2006.

s/ Michael T. Parker  
\_\_\_\_\_  
United States Magistrate Judge



# EXHIBIT K

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 EDNA GOYA, an individual,  
12 Plaintiff,  
13 vs.  
14 MERCK & CO., INC., a corporation;  
15 MCKESSON CORPORATION, a  
16 corporation; and DOES 1-100,  
17 inclusive,  
Defendants.

CASE NO. 06-CV-2574 H (AJB)

**ORDER DENYING  
MERCK & CO.'S MOTION  
FOR A STAY WITHOUT  
PREJUDICE AND  
DEFERRING RULING ON  
MOTION TO REMAND  
(Doc. Nos. 6 & 10)**

18 Defendant Merck & Co., Inc. ("Merck") removed this case from state court on  
19 November 21, 2006. (Doc. No. 1.) In her complaint, Plaintiff Edna Goya alleges that  
20 she suffered injuries caused by her use of Merck's product, Fosamax. (*Id.*) On  
21 December 14, 2006, Merck filed a motion to stay proceedings. (Doc. No. 6.) Plaintiff  
22 filed a response in opposition on December 29, 2006. (Doc. No. 9.) Merck filed a reply  
23 on January 3, 2007. (Doc. No. 12.) On January 3, 2007, Defendant McKesson  
24 Corporation filed a notice that it joins in Merck's request for a stay. (Doc. No. 14.) In  
25 its motion, Merck asks the Court to stay the proceedings pending a decision by the  
26 Judicial Panel on Multidistrict Litigation ("JPMDL") as to whether this action should  
27 be transferred to In re Fosamax Prods. Liab. Litig., MDL No. 1789, currently pending  
28 before Judge John Keenan in the Southern District of New York.

1 On December 29, 2006, Plaintiff filed a motion to remand. (Doc. No. 10.)  
2 Merck filed a response in opposition on January 26, 2007. (Doc. No. 18.) McKesson  
3 filed a joinder in Merck's response on January 23, 2007. (Doc. No. 17.)

4 As indicated in a previous order, pursuant to its discretion under Civil Local Rule  
5 7.1(d)(1), the Court submits the motions on the papers without oral argument.

6 On December 27, 2006, the JPMDL entered an order conditionally transferring  
7 this case to the In re Fosamax proceedings. (Jeffrey M. Tanzer Decl. Supp. Def.'s  
8 Reply Supp. Mot. to Stay Proceedings, Ex. 1.) Plaintiff indicates that she will oppose  
9 final transfer, however. If Plaintiff files an opposition, according to Rule 7.4 of the  
10 Rules of Procedure of the JPMDL, the conditional transfer order will be stayed until  
11 further order of the JPMDL, and the JPMDL will set the matter for hearing. See Rules  
12 of Procedure of the JPMDL, Rule 7.4(c)-(d). Then, the JPMDL will determine whether  
13 to issue a final transfer order.

14 Under the rules of procedure of the JPMDL, a pending conditional transfer order  
15 does not affect pretrial proceedings in the district court and does not in any way limit  
16 the pretrial jurisdiction of the district court. See Rule 1.5 of the Rules of Procedure for  
17 the Judicial Panel on Multidistrict Litigation. Nevertheless, district courts have inherent  
18 power to stay their own proceedings. The power to stay a case is "incidental to the  
19 power inherent in every court to control the disposition of the causes on its docket with  
20 economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am.  
21 Co., 299 U.S. 248, 254 (1936); see also CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th  
22 Cir. 1962). Whether to grant a stay is left to the sound discretion of the trial court.  
23 CMAX, Inc., 300 F.2d at 268. Courts generally take into consideration judicial  
24 economy and prejudice to the parties in determining whether to enter a stay. See, e.g.,  
25 Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997); see also Landis,  
26 299 U.S. at 254-55.

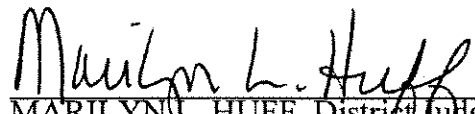
27 Given that this case was recently filed and the JPMDL has already entered a  
28 conditional transfer order, the Court finds that a formal stay is not required to preserve

1 judicial resources and to avoid prejudice to Merck. Accordingly, the Court **DENIES**  
2 Merck's motion for a stay without prejudice. The Court notes that at least 58 cases  
3 have already been transferred to the coordinated proceedings before Judge Keenan, and  
4 additional cases, such as this one, are currently awaiting transfer decisions by the  
5 JPMDL. Therefore, although the Court declines to impose a formal stay, the Court does  
6 not expect the parties to pursue the case or conduct any discovery while awaiting the  
7 JPMDL's decision.

8 Additionally, Plaintiff has recently filed a motion to remand this action. As at  
9 least one court has noted: "The general rule is for federal courts to defer ruling on  
10 pending motions to remand in MDL litigation until after the JPMDL has transferred the  
11 case to the MDL panel." Jackson v. Johnson & Johnson, Inc., No. 01-2113 DA, 2001  
12 WL 34048067, at \*6 (W.D. Tenn. April 3, 2001); see also In re Amino Acid Lysine  
13 Antitrust Litig., 910 F. Supp. 696, 700 (J.P.M.L. 1995) ("[T]he pending motion to  
14 remand . . . can be presented to and decided by the transferee judge."). Accordingly,  
15 the Court will **DEFER** ruling on Plaintiff's motion to remand for 60 days, subject to  
16 further deferral if the JPMDL has not entered a final ruling on transfer at that time. If  
17 the JPMDL declines to enter a final transfer order, the motion to remand will be  
18 pending before this Court. If, however, the JPMDL enters a final transfer order  
19 consolidating this case for pretrial proceedings in the Southern District of New York,  
20 the Court notes that the motion will be pending before the transferee court and no  
21 longer before this Court.

22 IT IS SO ORDERED.

23 Dated: February 1, 2007

24   
25 MARILYN L. HUFF, District Judge  
26 UNITED STATES DISTRICT COURT  
27  
28

Case 3:06-cv-02574-H-AJB Document 19 Filed 02/02/2007 Page 4 of 4

1 Copies To:

2 Magistrate Judge Battaglia

3 Hector G. Gancedo

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5 Amy M. Boomhouwer

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8 Pasadena, CA 91105

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10 Jeffrey Tanzer

11 Venable LLP

12 2049 Century Park East, Suite 2100

13 Los Angeles, CA 90067

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